

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
) SS
COUNTY OF MARION)**

**TED R. GREEN,
Complainant,**

DOCKET NO. EMra78010063

vs.

**EXCEL CORPORATION – DIVISION OF EXCEL
INDUSTRIES, INC.,
AND
UAW, LOCAL 764,
Respondent.**

FINDINGS OF FACT CONCLUSIONS OF LAW, AND ORDER

Comes now Respondent, Excel Corporation – Division of Excel Industries, Inc. (hereinafter “Excel”), by counsel, and files its Motion To Dismiss, which Motion is in words and figures as follows:

(H.I.)

And comes now Complainant, Ted R. Green (hereinafter “Green”) by counsel, and files his Reply to Motion to Dismiss, which reply is in words and figures as follows:

(H.I.)

And comes now Excel, by counsel, and files its Application For Leave To Withdraw Motion To Dismiss, which Application is in words and figures as follows:

(H.I.)

And comes now Excel, by counsel, and files its Amended Motion To Dismiss, which Amended Motion is in words and figures as follows:

(H.I.)

And comes now Respondent, UAW Local 764 (hereinafter “Local 764”) by counsel, and files its Motion To Dismiss of Respondent UAW Local 764, which Motion is in words and figures as follows:

(H.I.)

And comes now Green, by counsel, and files his Reply To Respondents Motion To Dismiss, which Reply is in words and figures as follows:

(H.I.)

And comes now Excel, by counsel, and files Respondent Excel Corporation’s Response to Complainant’s Reply and Memorandum, which Response is in words and figures as follows.

(H.I.)

And comes now Green, by counsel, and files Complainant’s Response To Respondent Excel Corporation’s Response to Complainant’s Reply and Memorandum which Response is in words and figures as follows.

(H.I.)

And comes now James A. Lang, Chairman of the Indiana Civil Rights Commission (hereinafter "ICRC") and enters his Recommended Findings of Fact, Conclusions of Law, and Order, which are in words and figures as follows:

(H.I.)

And comes now Green, by counsel, and files his Objections to Recommended Findings of Fact, Conclusions of Law and Order, which Objections are in words and figures as follows:

(H.I.)

ICRC, pursuant to IC 4-22-1-12, held a hearing on said Objections on Thursday, February 19, 1981. Commissioners present were Chairman Lang, Vice-Chairman Dr. Nedra S. Kinerk, Mary W. Shafer, and David L. Staples. Absent were Commissioners Dr. C. T. Boyd, John C. Carvey, and Everett J. Coleman. Green was present and represented by counsel, Ms. Alice M. Craft. Excel was represented by counsel, Mr. Robert T. Sanders, III. Local 764 was represented by counsel, Mr. Richard Swanson. Evidence was presented and argument heard.

Having considered the above the evidence presented, and the arguments of counsel, ICRC hereby finds and rules as follows:

1. Conclusion of Law Number two (2), as recommended by the Chairman should be modified to read as follows:
 2. There is no tolling of the time limitations in the statute on legal or equitable grounds in this case.
2. In all other respects, Green's Objections should be, and the same hereby are, overruled.

IT IS THEREFORE ORDERED

1. With the aforementioned modification, the Recommended Findings of Fact, Conclusions of Law, and Order, a copy of which is attached hereto and incorporated by reference herein, are hereby adopted as an order of ICRC>

Signed: March 20, 1981

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

STATE OF INDIANA)
) SS
COUNTY OF MARION)

**TED R. GREEN,
Complainant,**

DOCKET NO. EMra78010063

vs.

**EXCELL CORPORATION – DIVISION OF EXCEL
INDUSTRIES, INC.,
AND
UAW, LOCAL 764,
Respondent.**

RECOMMENDED FINDINGS OF FACT CONCLUSIONS OF LAW, AND ORDER

Comes now Respondent Excel Corporation – Division of Excel Industries, Inc. (hereinafter “Excel”), by counsel, and files its Motion To Dismiss, which Motion is in words and figures as follows:

(H.I.)

And comes now Complainant, Ted R. Green (hereinafter “Green”) by counsel, and files his Reply To Respondent’s Motion To Dismiss, which Reply is in words and figures as follows:

(H.I.)

And comes now Excel, by counsel, and files its Amended Motion To Dismiss, which Amended Motion is in words and figures as follows:

(H.I.)

And comes now Respondent UAW Local 764 *(hereinafter “Local 764”), by counsel, and files its Motion To Dismiss of Respondent UAW Local 764, which Motion is in words and figures as follows:

(H.I.)

And comes now Green, by counsel, and files his Reply To Respondents’ Motions to Dismiss, which Reply is in words and figures as follows:

(H.I.)

And comes now Excel, by counsel, and files Respondent Excel Corporation’s Response to Complainant’s Reply and Memorandum, which Response is in words and figures as follows:

(H.I.)

And comes now Green, by counsel, and files Complainant’s Response to Respondent Excel Corporation’s Response to Complainant’s Reply and Memorandum, which Response is in words and figures as follows:

(H.I.)

And comes now James A. Lang, Chairman of the Indiana Civil Rights Commission (“ICRC”), having considered the above and being duly advised in the premises and recommends that ICRC enter the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Green filed the instant complaint with ICRC on January 30, 1978, alleging that he was discharged by Excel because of his race on August 27, 1976, and that Local 764 would have handled his case (apparently his grievance) better had he been white.
2. In said Complaint, Green alleged that he filed a grievance through Local 764 on August 27, 1976, and that the final determination of his grievance was entered on December 2, 1977.
3. The discharge which is the subject of this complaint occurred, in fact, on July 27, 1976.
4. Green's grievance concerning the discharge was filed, in fact, on August 22, 1976.
5. Green's grievance was the subject of arbitration in the course of which a hearing was held on December 6, 1976.
6. The Arbitrator entered his decision on January 21, 1977 and delivered it to the American Arbitration Association for delivery to the parties.
7. The parties to the arbitration proceeding were Excel and Local 764.
8. The decision of the arbitrator was delivered to the parties to the arbitration proceeding on or about January 24, 1977.
9. There is insufficient evidence to conclude that Green filed a proper complaint with ICRC in 1977.
10. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The "termination" of a grievance procedure, as that term is used in IC 22-9-1-3(o), occurs no later than when the parties to the grievance procedure are notified of the final determination. Since, in this case, that occurred in late January of 1977 and the instant complaint was filed approximately a year later,

said complaint was not filed within ninety (90) days of the termination of a published and meaningful grievance procedure. Had the General Assembly intended this period to run from notification to Complainant, it would have expressly stated the same, as it did with respect to decision by local agencies. See IC 22-9-1-3(o).

2. There can be no tolling of the time limitations in the statute on legal or equitable grounds.
3. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Excel's Amended Motion to Dismiss should be, and the same hereby is, granted.
2. Local 764's Motion To Dismiss should be, and the same hereby is, granted.
3. Greens Complaint should be, and the same hereby is dismissed.

Dated: August 21, 1980